

## **Grassland Reserve Program Conservation Easement Deed**

This Conservation Easement Deed ("Deed"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, and its successors, heirs and assigns, (hereinafter "Grantor") and the UNITED STATES OF AMERICA, and its assigns, (hereinafter "Grantee" or "United States"). Grantor and the United States are jointly referred to as the "Parties." The acquiring agency of the United States is the Natural Resources Conservation Service of the United States Department of Agriculture ("NRCS").

### **I. Recitals and Conservation Purposes**

A. Grantor owns the property ("Property") located in \_\_\_\_\_ (County) of \_\_\_\_\_ (State) and legally described in Exhibit A attached hereto and made part of this Deed.

B. The grassland and other natural characteristics of the Property (also referred to herein as "conservation values") as well as its state of improvement, are described in a Baseline Inventory Report ("Report") prepared by Grantee with the cooperation of Grantor and attached hereto at Exhibit B. The Report describes the condition of the Property as of the date of this Deed. The Report may be used by Grantee to assure that any future changes in the use of the Property are consistent with the terms of this Deed. However, this Report is not intended to preclude the use of other evidence to establish the condition of the Property at the time this Deed is executed if there is controversy over the Property's use.

C. Grantor intends that the grassland and other conservation values of the Property be preserved and maintained. To effectuate this conservation purpose, Grantor intends to convey to Grantee the right to preserve and protect the grassland and other conservation values of the Property.

D. Acquisition of this Deed is authorized by the Grassland Reserve Program ("GRP") authorized by sections 1238N through 1238Q of Title XII of the Food Security Act of 1985, as amended. The easement rights in the above-described lands are being acquired for administration by the Secretary of Agriculture

through the Natural Resources Conservation Service of the United States Department of Agriculture for the purposes of restoring and protecting grassland acreage, including shrubland, rangeland, pastureland, and other lands, and for protecting the conservation values, including wildlife habitat and water quality improvement.

NOW THEREFORE, in consideration of the sum of \_\_\_\_\_ Dollars(\$ \_\_\_\_\_), Grantor hereby grants and conveys with general warranty of title to the United States and its assigns an easement in the Property, including development rights and access to the Property, as defined herein. It is the intent of Grantor to convey and relinquish all development rights to Grantee for the purpose of protecting the conservation values identified herein. This Deed shall constitute a servitude upon the Property so encumbered, shall run with the land and shall bind Grantor, its heirs, successors, assigns, lessees, and any other person claiming under them.

Subject, however, to any valid rights of record.

The term of this easement is [perpetual] or [\_\_\_\_years] expiring on \_\_\_\_\_20\_\_\_\_.

## II. Purposes

It is the primary purpose of this Deed to retain the Property in grassland by conserving and restoring native and desired non-native grasses, forbs and shrubs and the preservation and protection of natural habitat, wildlife habitat, biodiversity, and other conservation values referenced in this Deed and the Report. Grazing shall be permitted consistent with these conservation purposes.

## III. Permitted, Prohibited, Restricted and Reserved Activities

A. Grassland Uses of the Property. Grantor reserves the right to graze, hay, harvest for seed production, and mow. Grantor shall not hay, mow or harvest for seed during certain nesting seasons for birds whose populations Grantee determines are in significant decline. Such determinations shall be made in writing to the Grantor, or set forth within the Conservation Plan on the Property (see paragraph IV. A.). In addition, Grantor may maintain existing watering facilities (i.e. water tanks, troughs and dugout ponds) for livestock in their current location as identified in the Report. Grantor may construct or place on the Property new watering facilities for livestock with prior written approval of Grantee.

B. Quiet Enjoyment. In addition, Grantor reserves for itself and its invitees the

right of quiet enjoyment and the right to convey or lease the Property and restrict public access.

C. Prohibited Acts. Grantor shall not perform, nor knowingly allow others to perform, any act, including those prohibited or restricted herein, that is inconsistent with the purposes of this conservation easement.

D. Crop Cultivation. Except for grassland uses permitted in paragraph III. A., the cultivation of crops for human or domestic animal consumption, including tree or shrub nurseries, fruit or nut producing trees, vineyards, tree farms or plantations, aquaculture, or any agricultural commodity that requires breaking the soil surface, is prohibited.

E. Topography. Altering the existing topography of the Property by digging, plowing, disking, or otherwise disturbing the surface is prohibited, except when required, as determined in advance and in writing by Grantee, to protect and enhance conservation values, and manage the grassland uses references in paragraph III. A.

F. Waste. Dumping, collecting, recycling or storing of trash, refuse, waste, sewage, or other debris is prohibited, except that animal waste may be used on the Property as fertilizer as long as such use is approved in advance and in writing by Grantee.

G. Mining. The exploration, development, mining, or extraction of soil, sand, gravel, mineral, oil, gas or any other hydrocarbon substance on the surface of the Property is prohibited. However, mineral extraction may be conducted by other than surface mining methods if it does not impact the surface of the Property and the extraction will not impair the conservation values of the Property. Any extraction permitted pursuant to this paragraph requires prior written notice to Grantee, which shall include a description of the areas within which extraction will occur and its anticipated impact. Exploration, development, mining or extraction that may result in subsidence, run off, or other surface effects on the Property is prohibited. In addition, no part of the Property will be used for the storage or processing of minerals, oil, or gas.

H. Construction of Buildings or Other Structures. Construction of buildings or other structures on the Property is prohibited. However, repair and maintenance of existing structures, as identified in the Report, are permitted at the same location and within the existing footprint of such structures. In addition, repair or replacement of existing corrals, windmills, barns, or other livestock facilities, as identified in the Report, are permitted at the same location and within the existing footprint.

I. Timber Harvesting. Trees may be cut to control insects and disease, prevent personal injury and property damage, obtain firewood for personal use, construct fences as permitted herein, and, with advance written permission of Grantee, maintain grasslands. Any commercial harvesting shall be conducted in accordance with a forest management plan as set forth in paragraph IV. C. herein.

J. Fences. Existing fences may be repaired or replaced and new fences may be built on the Property for the purposes of managing livestock in a manner that is customary in the region where the Property is located and consistent with the purposes of this Deed set forth at part II. Fences that restrict the movement of wildlife, as determined by Grantee, are prohibited.

K. Roads and Impervious Surfaces. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, nor shall any road for access or other purposes be constructed. Existing roads may be maintained in their location and within their existing footprint as identified in the Report. However, maintenance and repair of existing roads shall not be construed to permit the paving of any existing road not already paved or otherwise covered in an impervious material.

L. Recreational Uses. Undeveloped, passive, non-motorized recreational uses, such as hiking, camping, bird watching, and hunting, are permitted as long as such uses are, as determined by Grantee, limited in scope and do not impair the conservation values of this Deed.

M. Development Rights. The Property shall not be developed except as expressly permitted by this Deed. Subject to valid existing rights of record, all development rights associated with the Property are vested in Grantee. The Parties agree that these development rights are terminated and extinguished and may not be used on or transferred off of the Property to any other property or otherwise used.

N. Signs. Except for no trespassing signs, for sale signs, and signs identifying the owner of the Property, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet in size. The Parties agree that the United States has the right to erect and maintain signs on the Property for the purpose of identifying this easement.

O. Exotic or Biologically Engineered Species. The introduction, cultivation, or use of exotic, or biologically engineered plant or animal species is prohibited on the Property without prior written approval of Grantee.

P. Subdivision. The Property may be subdivided with prior written approval by

Grantee. The terms of this Deed shall apply to any subdivided parcels.

Q. Utilities. Installation, maintenance, repair, replacement, removal, or relocation of electric, gas, water and wind power facilities, sewer lines, or other public or private utilities, including telephone or other communications services over or under the Property, is prohibited, except to the extent determined by Grantee as necessary to serve the Property and uses permitted by this Deed. Notwithstanding the preceding sentence, the construction or installation of telecommunications structures, including towers, buildings, antennas, satellite and microwave dishes and any other telecommunications support facilities, is prohibited on the Property.

R. Water Rights. Grantor shall retain the right to use the water rights described in Exhibit A for the present and future use on the Property and shall not transfer, lease, sell, or otherwise separate the water rights from the Property.

S. Restoration. In furthering the conservation purposes of this Deed, Grantor may restore grasses, forbs, and shrubs on the Property if approved in advance and in writing by Grantee. In addition, Grantee shall have the right to enter the Property to undertake, at its own expense or on a cost-share basis with Grantor or other entity, to restore, protect, manage, maintain, enhance, and monitor the grassland and other conservation values of the Property.

#### IV. Affirmative Duties: Planning Requirements

A. Conservation Plan. The Parties agree that good resource management and land stewardship is important for present and future generations and for the protection and enhancement of grasses and other native and natural vegetation on the Property, and in furtherance of its conservation values. Grantor agrees to implement a Conservation Plan on the Property. This Conservation Plan shall be developed in consultation with and approved by NRCS and shall be updated as needed to reflect any change in use of the Property. No use shall be provided for in the Conservation Plan which is inconsistent with the provisions of this Deed.

B. Pest and Weed Control. Grantor is responsible for control of noxious weeds and pests.

C. Forest Management Plan. Commercial harvesting shall be conducted in accordance with a forest management plan prepared by a licensed, professional forester, which is approved in advance and in writing by Grantee, and which does not impair the purposes of this Deed, including the protection of animal and plant diversity. A copy of this plan shall be provided to and approved by Grantee at least one month prior to any timber harvest.



## V. Enforcement and Remedies

### A. Easement Management.

1. Grantee may, in its discretion, enter into an agreement with a third party to assist Grantee in carrying out its rights and responsibilities under this Deed (including any management, restoration, monitoring, or enforcement responsibilities).
2. Grantee, with the Landowner's permission, may delegate all or part of its rights or responsibilities under this Deed (including any management, restoration, monitoring, or enforcement responsibilities) to any entity Grantee determines, in accordance with 16 U.S.C. 3838q or other applicable law, has the appropriate authority, expertise, and resources necessary to carry out such delegated rights and responsibilities.

### B. Enforcement.

1. Grantee has the right to prevent and correct or require correction of violations of the terms of this Deed. Grantee or Grantee's agents may enter the Property at any time to inspect for violations, including, but not limited to, assessing compliance with the Conservation Plan or other plan described in Section IV above. If Grantee finds a violation, Grantee may at its discretion take appropriate legal action in law or equity. Upon discovery of a violation, Grantee shall notify Grantor in writing of the violation. Except when an ongoing or imminent violation could, as determined by Grantee, seriously impair the conservation values of the Property, Grantee shall give Grantor written notice of the violation and 30 days to correct it before filing any legal action.
2. If Grantor fails to cure the violation within 30 days after receipt of a notice of violation, Grantee may bring an action in court to enforce the terms of this Deed, to enjoin the violation, and to require restoration of the Property to the condition that existed prior to any such injury. Where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in halting and correcting the violation, including but not limited to reasonable attorneys' fees.
3. Any delay by Grantee in exercising its rights under this Deed in the event of any violation of its terms by Grantor shall not be deemed a waiver by Grantee of such rights with respect to that violation. Moreover, any failure by Grantee to discover a violation of this Deed or forbearance by Grantee in exercising its rights under this Deed in the event of any violation of its terms by Grantor shall not be deemed a waiver by Grantee

of such rights with respect to any subsequent violation.

## VI. General Terms

A. Access. No public access is conveyed by this Deed. Grantor maintains the right and obligation to prevent trespass and control access by the public pursuant to State and Federal law, provided that Grantee has the right of ingress and egress to the Property over Grantor's property, whether or not Grantor's property is adjacent to or appurtenant to the Property, for the exercise of Grantee's rights under this Deed. The authorized representatives of Grantee may utilize vehicles and other reasonable modes of transportation for access purposes.

B. Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee or in any way affect any existing obligations of Grantor as the owner of the Property. For example:

1. Taxes. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property.

2. Upkeep and Maintenance. Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property.

C. Rights Acquired. The property rights of the United States acquired under this Deed shall be unaffected by any subsequent amendments to or repeal of the Grassland Reserve Program. If Grantor receives consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be effective upon payment of the first installment.

D. Subsequent Conveyances. Grantor agrees to notify Grantee in writing of the names and addresses of any party to whom the Property is to be transferred at or prior to the time the transfer is consummated. Grantor and its successors and assigns shall specifically refer to this Deed in any subsequent lease, deed, or other instrument by which any interest in the Property is conveyed.

E. Subsequent Liens. No provisions of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for a loan, provided that any mortgage or lien associated with the loan is subject to or subordinated to this Deed.

F. Severability. If any provision of this Deed is found to be invalid, the remainder of its provisions shall remain in force.



G. Rules of Construction. This Deed shall be interpreted under the laws of the United States. Any ambiguities in this Deed and questions as to the validity of any of its specific provisions shall be resolved in favor of Grantee so as to preserve the conservation values of the Property and to give maximum effect to the purposes of this Deed.

H. Environmental Warranty. Grantor warrants that it has no actual knowledge of any release or threatened release of hazardous substances, hazardous wastes, toxic or hazardous material, pollutants, or contaminants on the Property, as such substances, wastes, and materials are defined by applicable Federal, State, and local Environmental Laws. For purposes of this Deed, the term "Environmental Laws" shall mean all Federal, State, and local laws, including statutes, regulations, ordinances, codes, rules, and other governmental restrictions and requirements relating to hazardous substances, hazardous waste, toxic, or hazardous material, pollutants or contaminants, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; and the Clean Water Act, 33 U.S.C. § 1251 et seq. Grantee, in purchasing the Conservation Easement and related interests described herein, assumes no affirmative obligations whatsoever for the management, supervision, or control of the Property or of any of the activities or day-to-day operations on the Property. Grantor shall be exclusively responsible to pay for or to perform all claims, costs, expenses, fines, penalties, fees, sanctions, investigations, cleanup, restoration, or response or corrective action under applicable Environmental Laws arising from or out of any such release or threatened release of hazardous substances, hazardous wastes, toxic or hazardous material, pollutants, or contaminants on the Property.

I. Indemnification. Grantor shall indemnify and hold harmless Grantee, its employees, agents, assigns, and successors for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Property, including but not limited to negligent acts, the breach by Grantor of any representation, warranty, covenant, or agreements contained in this Deed, violations of any Federal, State, or local laws, including all Environmental Laws, and liability associated with the use or misuse, handling or mishandling, storage, spillage, discharge, seepage into surface or ground water, or release or threatened release of hazardous substances, hazardous wastes, toxic or hazardous material, pollutants, or contaminants.

J. Notices. Any notices required by this Deed shall be in writing and personally delivered or sent by certified mail, return receipt requested, to Grantor and Grantee.

K. No Merger. If Grantee at some future time acquires the underlying fee title in the Property, the interest conveyed by this Deed will not merge with fee title but will continue to exist and be managed as a separate estate.

L. Acceptance. The signature below of Grantee's authorized representative constitutes acceptance of the rights and responsibilities conveyed by this Deed to the United States.

M. Captions. The captions used in this Deed have been inserted solely for convenience of reference. They are not part of this Deed and shall have no effect upon its interpretation.

N. Rights and Obligations. All provisions of this Deed apply to Grantor or Grantee and their respective agents, heirs, executors, administrators, assigns, and any other successors.

TO HAVE AND TO HOLD, this Conservation Easement Deed is granted to the United States of America and assigns. Grantor covenants that it is vested with good title to the Property and shall warrant and defend the same on behalf of the United States against all claims and demands. Grantor covenants to comply with the terms and conditions enumerated in this Deed governing use of the Property, and adjacent lands for access to the Property, and to refrain from any activity that is restricted, prohibited or inconsistent with the purposes of this Conservation Easement Deed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Landowner(s) \_\_\_\_\_

\_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

I \_\_\_\_\_, being the duly authorized representative of the United States Department of Agriculture, Natural Resources Conservation Service, do hereby accept this Conservation Easement Deed with respect to the rights and duties of the United States.



Acknowledgment

In the State or Commonwealth of \_\_\_\_\_, County,  
Borough or Parish of \_\_\_\_\_, on this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for  
said jurisdiction, personally appeared \_\_\_\_\_ to me known to  
be the person(s) described in and who executed the foregoing instrument, and  
acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and  
deed.

IN TESTIMONY WHEREOF, I have hereunto my hand and Notarial Seal  
subscribed and affixed in said jurisdiction, the day and year above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

This instrument was drafted by the Office of the General Counsel, U.S.  
Department of Agriculture, Washington, D.C. 20250-1400.